



EUROPEAN COMMISSION

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*Mr Călin POPESCU-
TĂRICEANU
President of the Senat
Calea 13 Septembrie nr. 1-3,
sector 5
RO – 050711 BUCHAREST*

Dear President,

The Commission would like to thank the Senat for its Opinion on the Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing Regulation (EC) No 2007/2004, Regulation (EC) No 863/2007 and Council Decision 2005/267/EC {COM(2015) 671 final}.

This proposal is an essential element of a broader Border package of ambitious and comprehensive measures designed to better manage migration and to improve the internal security of the European Union while safeguarding the free movement of persons in the Schengen area in the context of the ongoing migratory crisis.

The unprecedented scale of the massive influx of migrants followed by the secondary movements within the EU that it has triggered have clearly demonstrated that the existing rules and mechanisms are not sufficient to deal with the challenges posed by the migratory crisis. The draft Regulation responded to the need to reinforce the way in which the EU's external borders are managed as highlighted in the European Agenda on Migration¹ and confirmed by the European Council of 15 October 2015.

The Commission welcomes the Senat's support for many of the new elements the proposal brings about, such as establishing a vulnerability assessment, posting liaison officers, providing for a legal framework for the actions carried out in hotspot areas as well as improving cooperation on coastguard functions and with third countries.

On 21 June 2016 the co-legislators reached a political agreement on the file, which was confirmed by the European Parliament plenary vote on 6 July 2016. The compromise on the European Border and Coast Guard Regulation will ensure a truly European integrated management of our borders, based on the principle that security of our common EU external borders is a responsibility shared amongst all EU Member States. There should no longer be shortages of staff or equipment for operations at the external borders.

¹ COM(2015) 240 final

The enhanced Agency will support, monitor and, when necessary, reinforce the national border guards, focusing primarily on early detection and prevention of weaknesses in the management of the external borders.

Whilst Member States will remain the key actors for managing their borders, the European Border and Coast Guard will work as a safety net: in exceptional situations, when a Member State is unable to cope with the situation on its own, the European Border and Coast Guard will be able to step in, drawing on pools of resources – both staff and technical equipment - provided and to be mandatory deployed by the Member States.

The Commission hopes that the Regulation enters into force as soon as possible.

In response to the more technical clarifications requested in the Opinion the Commission would like to refer to the attached annex.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Senat and looks forward to continuing the political dialogue in the future.

Yours faithfully,

Violeta Bulc

Member of the Commission

ANNEX

The Commission has carefully considered each of the issues raised by the Senat in its Opinion and is pleased to offer the following clarifications.

As regards liaison officers of the Agency to be deployed from the Agency's staff to a Member State, their role is to ensure regular monitoring of the management of the EU's external borders by the Member State concerned. As indicated in Article 11 of the Regulation, liaison officers will foster dialogue and cooperation between the Agency and the national border management authorities by acting as an interface between them. The professionalism of the persons to be deployed as liaison officers will be guaranteed by the Agency. The Commission is of the opinion that there is no need for a prior agreement on the person to be sent as a liaison officer. In the same way, a Member State to be evaluated under the Schengen Evaluation Mechanism cannot veto a member of the team (composed of Commission and Member State experts and, as observers, representatives of the EU Agencies) that will carry out an on-site visit in order to verify whether the Member State concerned correctly implements the Schengen acquis. Such a deployment should not be considered as not respecting the sovereignty of the Member State concerned as the latter will be notified of the appointment and will – together with the Agency's Executive Director – determine the location of deployment.

As regards the decision-making procedure on urgent action by the Agency, triggering Article 19 would only be possible if the Council adopts an implementing decision on the basis of a Commission proposal.

The current crisis has clearly demonstrated that events and emergency situations at the external borders could easily develop within a very short period of time. Therefore, the Regulation provides for a possible adoption - on the basis of a Commission proposal - of an implementing decision of the Council identifying that an urgent situation exists and defining the measures to be taken by the Agency to address it, where there is a pressing need for the Agency to intervene.

With the establishment of a rapid reaction pool and a rapid technical equipment pool, the Regulation will address one of the major weaknesses of the current system. To date, Frontex has had to rely on the voluntary contributions by the Member States which, particularly in the context of the current crisis, have proven insufficient and have often prevented it from performing effectively.

It should be noted that the final text of the Regulation changed the approach which was initially proposed by the Commission for the rapid reaction pool, i.e. the contribution of the Member States to be based on 2% or 3% of their staff dealing with border control. Instead, the Presidency of the Council held individual meetings with each Member State to discuss what figures would be realistic regarding their mandatory contributions to the rapid reaction pool. The concrete figures agreed upon with each Member State during the negotiation process are included in an annex as part of the Regulation. The European Parliament accepted this approach.

Additionally, the new legal basis provides for a certain degree of flexibility allowing a Member State to derogate from the agreed number under specific conditions, for example when a risk analysis or a vulnerability assessment (if available) shows that the contribution to the rapid reaction pool would substantially affect the discharge of national tasks.

The final compromise text of the Regulation provides for flexibility for the Member States to decide which national entity would act as a national contact point for communication with the Agency on all matters relating to the activities of the Agency.